

Planning Department

TOWN OF ACTON
472 Main Street
Acton, Massachusetts 01720
Telephone (978) 264-9636
Fax (978) 264-9630
planning@acton-ma.gov

INTERDEPARTMENTAL COMMUNICATION

To: Steven Ledoux, Town Manager **Date:** September 29, 2009
From: Scott A. Mutch, Zoning Enforcement Officer & Assistant Town Planner
Subject: Site Plan Special Permit #06/05/07-411 – **Extension of Time**

Location: 253 Main Street
Applicant: Ken Sundberg, 20 Henley Road, Acton, MA 01720
Owner: The Sundberg Family Acton
Nominee Trust
Zoning: Kelley's Corner (KC)
Groundwater Protection District Zone 4
Original Expiry Date: October 22, 2009
Extension Date: October 22, 2010

The applicant is requesting a one year extension of time for the above noted Site Plan Special Permit.

Limitation 4.7 of the original decision stated *"This Site Plan Special Permit shall lapse on October 22, 2009 unless work approved by this permit has commenced except for good cause. Any request for extensions shall be made at least thirty (30) days prior to extension. The Board reserves the right to amend the permit by its own or at the request of the Petitioner with or without a new hearing"*.

Due to current economic climate conditions, the applicant has not yet commenced construction activity. As noted in the attached letter, the applicant is looking to secure a tenant for the new space prior to beginning construction. Therefore, the applicant is seeking a one year extension of time, extending the Decision effective through October 22, 2010. The Planning Department has no objection to this request.

Ken Sundberg
20 Henley Road
Acton, MA 01720
978-815-3560

September 11, 2009

The Board of Selectman
Acton Town Hall
472 Main Street
Acton, MA 01720

RE: Site Plan Decision #06/05/07 – 411

Dear Board of Selectman:

The above referenced Site Plan was modified and approved on March 23, 2009.

The modification did not address an extension to the beginning of construction for the new building, but rather remained at October 22, 2009.

I am requesting an extension for one year to October 22, 2010 to provide me with the time needed to secure a tenant prior to construction.

I appreciate your consideration in the matter.

Sincerely,

A handwritten signature in black ink, appearing to be 'Ken Sundberg', written over a horizontal line.

Ken Sundberg

NOV 9 2007

TOWN CLERK
ACTON

Site Plan Special Permit/Special Permit # 06/05/07z411
Ken Sundberg
253 Main Street (Magee)
Acton Massachusetts 01720

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DECISION of the Board of Selectmen (hereinafter the Board) on the petition of Ken Sundberg (hereinafter the Petitioner) for the property located at 253 Main Street, Acton, Massachusetts. Said property is shown on Acton Town Atlas Map F-3 Parcels 121-1 & 121-2

This Decision is in response to an application submitted to the Board on June 5, 2007 by the Petitioner for a Special Permit & Site Plan Special Permit under Section 10.3 & 10.4 of the Acton Zoning Bylaw (hereinafter the Bylaw) to expand an existing restaurant, construct an 8,000 two story addition.

After causing notice of the time and place of the public hearing and of the subject matter thereof to be published, posted and mailed to the Petitioner, abutters and other parties in interest as required by law, the hearing was called to order on July 16, 2007 at 7:45 PM continued to August 13th and again to October 9, 2007, in the Francis Faulkner Room at the Acton Town Hall. Board members F. Dore Hunter, Lauren Rosenzweig, Andrew D. Magee and Paulina S. Knibee were present throughout the proceedings.

The record of the proceedings and submissions upon which this permit is based may be referred to in the Office of the Town Clerk, or the Office of the Board.

Exhibit I

A properly executed application for Site Plan approval received June 5, 2007, including a letter to the Acton Town Clerk, a letter to the Board of Selectmen, a certified abutters list, Use description, Record plans, Drainage calculations, Water balance calculations, Earth removal calculations, Traffic study, four-sheet set of engineered plans dated May 31, 2007 revised October 1, 2007 a landscaping plan dated March 9, 2007. Two-sheet set of architectural plans not dated. Two letters from the Petitioner requesting an extension dated July 9th and September 19, 2007. Supplemental Drainage Calculations dated September 14, 2007. A letter to the Board from the Petitioner dated September 14, 2007.

Exhibit II

Interdepartmental Communication (IDC) from the Town Manager to the Town Staff requesting comments. The following IDC's were received:

1. Building Commissioner dated July 9, 2007, September 18, 2007 and October 4, 2007
2. Town Planner dated July 9, 2007
3. Fire Chief dated July 13, 2007
4. Municipal Properties Director dated July 20, 2007
5. Engineering Department dated July 10, 2007
6. Health Department two IDC's dated June 19, 2007
7. Design Review Board dated July 5, 2007
8. Sidewalk Committee not dated



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Bk: 52651 Pg: 294 Doc: DECIS
Page: 1 of 5 04/28/2009 10:51 AM

Exhibit I is hereinafter referred to as the Plan:

Deed Reference: Book 49442, Page 458

Please return to: D'Agostine, Levine, Parra
& Netburn, P.C., P. O. Box 2223,
Acton, MA 01720

A True Copy. Attest:

[Signature]
TOWN CLERK ACTON, MASS.

253 Main Street, Acton, Massachusetts

Site Plan Special Permit/Special Permit # 06/05/07-411
 Ken Sundberg
 253 Main Street (Magee)
 Acton Massachusetts 01720

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1.0 Findings and Conclusions

Based upon its review of the exhibits and records of the proceedings, the Board found and concluded that:

- 1.1 The site is located in Kelley's Corner Zoning District and Zone 4 of the Groundwater Protection District and the Office USE is allowed in both the Kelley's Corner Zoning District and Zone 4. The restaurant USE is allowed by Special Permit.
- 1.2 The Petitioner originally requested a Special Permit for a 60-seat restaurant. A Privilege Fee would be required if the 60-seat restaurant is granted. The Petitioner does not want to pay the Privilege Fee therefore this Special Permit is limited to the previously approved 1,578 gpd for the property. There is no guarantee that additional capacity will be available at a later date.
- 1.3 The landscaping and lighting plan are different than the Site Plan. Both plans must be revised so as to be consistent with the approved Plan.
- 1.4 The Design Review Board has reviewed the Plans. The Petitioner has indicated the awnings will be material on frame. The Board finds the design of the buildings to be consistent with Acton's Design Review Guidelines. The new/revised building shall be consistent with the plans submitted.
- 1.5 The Board received several comments concerning the construction of the sidewalks in Kelley's Corner. The possibility exists that the abutting properties will be redeveloped; therefore this sidewalk should be designed to be a starting point along Main Street for abutting properties. The Board finds the sidewalks along Main Street in this area shall be 6' wide and constructed of concrete. The plan does not show a crosswalk at the driveway entrance. The Plan shall provide a crosswalk and it shall be "stamped concrete". The sidewalk shall be located so as to be 5' from the pavement of Main Street and end at the property line of the adjacent property. Detectable warnings shall be installed at all curb cuts along Main Street. The proposed sidewalk will be located partially within the street layout and partially on the property. The Petitioner shall, prior to occupancy, provide an easement plan for the sidewalk.
- 1.6 The Bylaw § 6.9.1.3 provides that adjacent land shall be connected by a common driveway. This property provides a common driveway to the adjacent land from the rear of the property but not the front. The common driveway at the rear may be relocated as needed to adjust for the future redevelopment of the adjacent property. The Board finds a common driveway would be beneficial at the front of the building. The Petitioner shall cooperate with the Board for a possible future connection depending on the re-development of the adjacent property.
- 1.7 The Plan provides for 51 parking spaces. The Bylaw requires only 24 parking spaces. The Plan does not indicate where snow storage will occur. The plan shall be revised to show where snow storage will occur and a minimum of 24 parking spaces shall be preserved.
- 1.8 The Plan provides that the existing landscaping will remain at the front of the existing building. The landscaping does not extend to the property line. The landscaping shall be extended to the property line.
- 1.9 The Plan shows re-striping of the parking lot on the adjacent property. The Petitioner does not control the adjacent property. All reference to re-striping shall be removed.
- 1.10 The Plan provides for maintaining an existing paved swale on the southeast corner along Beverly Road. The Board finds this swale shall be increased to a width of 5' to facilitate pedestrian access to the site from the Beverly Road neighborhood.

Site Plan Special Permit/Special Permit # 06/05/07-411
Ken Sundberg
253 Main Street (Magee)
Acton Massachusetts 01720

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1.11 The Plan as herein modified:

- Will protect the neighborhood and the Town against seriously detrimental or offensive USES on the site and against adverse effects on the natural environment.
- Will provide for convenient and safe vehicular and pedestrian movement and that the locations of driveway openings are convenient and safe in relation to vehicular and pedestrian traffic circulation including emergency vehicles, on or adjoining the site.
- Will provide an adequate arrangement of parking and loading spaces in relation to the proposed USES of the premises.
- Will provide adequate methods of disposal of refuse or other wastes resulting from the USES permitted on the site.
- Is consistent with the Master Plan.
- Is in harmony with the purpose and intent of this Bylaw.
- Will not be detrimental or injurious to the neighborhood in which it is to take place.
- Is appropriate for the site and complies with all applicable requirements of this Bylaw.

Therefore, the Board voted 4-0 with Peter Berry abstaining to **GRANT** the requested Special Permit for a maximum of a 30-seat restaurant and Site Plan Special Permit subject to and with the benefit of the following, Plan revisions, Conditions and Limitations.

2.0 Plan Revisions

- 2.1 The landscaping and lighting plan shall be revised to be consistent with the Site Plan.
- 2.2 The sidewalk along Main Street shall be 6' wide and constructed of concrete. A 5' landscape strip shall be maintained along Main Street. The sidewalk along Main Street shall end at the adjacent property. The curb cuts along Main Street shall include an ADA complaint detectable warning strip.
- 2.3 The driveway entrance crosswalk shall be stamped concrete.
- 2.4 The existing landscaping along the northwest boundary shall be extended to the boundary.
- 2.5 The Plan shall be revised to indicate where snow storage will occur. A minimum of 24 parking spaces shall be maintained.
- 2.6 The existing paved swale at the southeast shall be increased to 5' on the property.
- 2.7 The plan shall be revised to show a possible future Common Driveway connection to the adjacent property in front of the building at a minimum width of 20 feet.

3.0 Conditions

- 3.1 The Petitioner shall prepare a sidewalk easement plan along the Main Street boundary. The Plan shall be prepared prior to Occupancy.
- 3.2 Prior to final inspection of the plantings by the Tree Warden, the Petitioner shall submit a letter, stamped and signed by the Landscape Architect of record, that the plantings were installed in compliance with commonly accepted industry practice, that they comply with the American Standard for Nursery Stock (ANSI Z60.1-2004), and that the actual plantings are consistent with the approved landscape plan.

Site Plan Special Permit/Special Permit # 06/05/07-411
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 253 Main Street (Magee)
 Acton Massachusetts 01720

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- 3.3 Prior to occupancy or use of any new building constituting a part of the project, an as-built plan shall be supplied by the engineer of record certifying that the project was built according to the approved documents. The as-built plan shall show all pavement, building and drainage structure locations above and below grade in their true relationship to lot lines, and include appropriate grades and elevations. In addition to the engineer of record, said plan shall be certified by a Mass. Registered Land Surveyor.
- 3.4 Prior to occupancy the Petitioner shall submit an as-built plan prepared by the designer that correctly reflects the as-built installation of the exterior lighting and certify the installation conforms to the requirements of the Bylaw.
- 3.5 It is not clear how or when the adjacent property will be redeveloped. The Petitioner shall cooperate with the adjacent property owner to include a common driveway as provided by Plan modification 2.7 in the front of the existing building if it is determined by the Board to be necessary to provide adequate room for safe vehicular turning movements and circulation.
- 3.6 The property is limited to a total of 1,578 gpd sewer flow unless approved by the Sewer Commissioner for a greater flow.
- 3.7 The location of the common driveway at the rear may be changed. The Petitioner shall cooperate if the Board, as part of the re-development of the adjacent property want an additional common driveway at the front of the property.

4.0 Limitations

The Authority granted to the Petitioner by this permit is limited as follows:

- 4.1 This permit applies only to the site, which is the subject of this petition. All construction shall be conducted in accordance with the terms of this permit and shall be limited to the improvements shown on the Plan.
- 4.2 There shall be no further development of this site without written consent of the Board of Selectmen as outlined within the Acton Zoning Bylaw.
- 4.3 This Decision applies only to the requested Site Plan Special Permit and Special Permit. Other permits or approvals required by the Acton Zoning Bylaw, other governmental boards, agencies or bodies having jurisdiction shall not be assumed or implied by this Decision.
- 4.4 No approval of any indicated signs or advertising devices is implied by this Decision.
- 4.5 The hauling of earth to and from the site shall be restricted to the hours between 9:00 AM and 4:00 PM Monday through Saturday.
- 4.6 The foregoing restrictions are stated for the purpose of emphasizing their importance but are not intended to be all-inclusive or to negate the remainder of the Acton Zoning Bylaw.
- 4.7 This Site Plan Special Permit shall lapse on October 22, 2009 unless work approved by this permit has commenced except for good cause. Any request for extensions shall be made at least thirty (30) days prior to expiration. The Board reserves the right to amend the permit by its own or at the request of the Petitioner with or without a new hearing.

Site Plan Special Permit/Special Permit # 06/05/07-411
Ken Sundberg
253 Main Street (Magee)
Acton Massachusetts 01720

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5.0 Appeals

Any person aggrieved by this Decision may appeal pursuant to the General Laws, Chapter 40A, Section 17 within 20 days after the filing of this Decision with the Acton Town Clerk.

Witness our hand this 5th day of Nov, 2007

F. Dore Hunter
F. Dore Hunter, Chairman

I, Christine Joyce, hereby certify that this is a true copy of the Decision of the Board of Selectmen.

Christine Joyce (MK)
Christine Joyce, Recording Secretary

Nov 8, 2007
Date filed with Town Clerk

Eva K. Taylor
Eva K. Taylor, Town Clerk

TO WHOM IT MAY CONCERN: This is to certify that the 20 day appeal period on the Decision of Ken Sundberg, has passed and there have been no appeals made to this office.

April 27, 2009
Date

Eva K. Taylor
Eva K. Taylor, Town Clerk

cc: Petitioner
Building Commissioner
Planning Board
Engineering
Conservation
Director of Municipal Properties
Board of Health
Town Clerk
Planning Boards - Concord, Littleton, Westford, Maynard, Carlisle, Boxboro, Stow, Sudbury



EVA K. TAYLOR
TOWN CLERK



Bk: 52651 Pg: 299 Doc: AMEND
Page: 1 of 5 04/28/2009 10:51 AM

TOWN OF ACTON
472 MAIN STREET
ACTON, MASSACHUSETTS, 01720
TELEPHONE (978) 264-9615
FAX (978) 264-9630
clerk@acton-ma.gov

April 27, 2009

TO WHOM IT MAY CONCERN:

This is to certify that the attached Board of Selectmen Decision (#06-05-07-411) on an application of Ken Sundberg (The Sundberg Family Acton Nominee Trust) for a Special Permit for property located at 253 Main Street, Acton, Massachusetts was filed with the Town Clerk's Office on March 25, 2009.

This is to certify that the 20 day appeal period on this decision has passed and there have been no appeals made to this office.

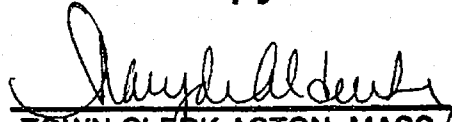
Mary de Alderete
Assistant Town Clerk

Deed Reference: Book 49442, Page 458

Please return to: D'Agostine, Levine, Parra & Netburn, P.C. P. O. Box 2223,
Acton, MA 01720

RE: 253 Main Street, Acton, Massachusetts

A True Copy. Attest:


TOWN CLERK ACTON, MASS. (ass.)

Site Plan Special Permit – 06/05/07 – 411 (1st Amendment)
Ken Sundberg
253 Main Street (Magee)
March 23, 2009



Board of Selectmen

TOWN OF ACTON
472 Main Street
Acton, Massachusetts 01720
Telephone (978) 264-9612
Fax (978) 264-9630
bos@acton-ma.gov
www.acton-ma.gov

**First Amendment of Site Plan Special Permit
DECISION
#06/05/07 - 411**

Ken Sundberg (The Sundberg Family Acton Nominee Trust)

March 23, 2009

Decision of the Acton Board of Selectmen (hereinafter the Board) on the request for a site plan special permit amendment made by Ken Sundberg (hereinafter the Applicant) in a letter to the Board dated December 1, 2008 for property located at 253 Main Street in Acton, Massachusetts, owned by The Sundberg Family Acton Nominee Trust. The property is shown on the 2007 Acton Town Atlas map F-3 as parcels 121-1 and 121-2 (hereinafter the Site). The requested amendment seeks approval for a change from the previously approved two-story building to a one-story building, and associated site plan changes.

The Board had issued site plan special permit decision #06/05/07 - 411 on November 5, 2007 – hereinafter referred to as the Original Decision. The Board held a public hearing on the proposed amendment on January 26, 2009 and continued it to a 2nd session on February 23, 2009. Present at the January 26, 2009 hearing were the applicant and 4 Board members. The 5th Selectmen subsequently signed an affidavit stating that she had watched a complete recording of the hearing that was available via a DVR disc. All five Board members were

present for the second (February 23, 2009) hearing, as was the Applicant. The minutes of the hearing and submissions on which this decision is based upon may be referred to in the Town Clerk's office or the office of the Board at the Acton Town Hall.

1 EXHIBITS

Submitted for the Board's deliberation were the following exhibits:

- 1.1 Application for a site plan special permit amendment received on December 1, 2008 consisting of the following:
 - Application letter by Ken Sundberg dated December 1, 2008, with a brief description and explanation of the proposed changes.
 - "Site Plan for 253 Main Street" by Stamski and McNary, Inc. consisting of four sheets, dated May 31, 2007 and last revised November 10, 2008.
 - Architectural floor and elevation plans ("Proposed Addition, 253 Main Street") by E.J. Rempelakis Associates consisting of three sheets, received on December 1, 2008.
 - Supplemental letter from Ken Sundberg dated February 2, 2009 with responses to departmental and advisory committee comments.
 - Landscape Plan by Kim Ahern Landscape Architects, dated March 9, 2007, revised January 14, 2008.
 - A lighting plan for the site by RUUD lighting, dated January 17, 2008.
 - A Retaining Wall Cross-Sections plan by Stamski and McNary, Inc. dated February 23, 2009.
 - List of parties in interest.
 - Filing fee.
- 1.2 Interdepartmental communication received from:
 - Acton Engineering Department, dated January 13, 2009.
 - Acton Fire Chief, dated January 26, 2009.
 - Acton Health Department, dated December 30, 2008.
 - Acton Planning Director, dated January 26, 2009.
 - Acton Tree Warden & Municipal Properties Director, dated December 17, 2008 and February 6, 2009.
 - Acton Zoning Enforcement Officer, dated January 15 and February 19, 2009.
 - Acton Design Review Board, dated January 26 and February 4, 2009.
 - Acton Sidewalk Committee, dated February 19, 2009.

Exhibit 1.1 is hereinafter referred to as the Amended Plan.

2 FINDINGS AND CONCLUSIONS

- 2.1 The applicant has requested the amendment to allow changes he wishes to make in response to changing economic conditions.
- 2.2 The Bylaw as in effect at the time of the Original Decision has not changed with respect to any aspects affecting the Site.
- 2.3 The Original Decision and all special permits thereunder expire on October 22, 2009 (par 4.7 of Original Decision). This amendment does not extend the expiration date.
- 2.4 The Amended Plan as further modified herein is consistent with the Master Plan, will not be detrimental or injurious to the neighborhood in which the use is to take place, provides for convenient and safe vehicular and pedestrian movement within and through the site.

provides an adequate number of parking spaces, provides adequate methods of refuse and waste removal from the site, and is in harmony with the purpose and intent of the Bylaw.

- 2.5 In the Original Decision, the Board also granted a use special permit for a restaurant with a maximum of 30 seats. This amendment is only for the site plan special permit of the Original Decision. The use special permit remains unchanged with a seat limit of 30.

3 BOARD ACTION

Therefore, the Board voted on March 23, 2009 to GRANT the requested amendment to site plan special permit #06/05/07 – 411 subject to and with the benefit of the following plan modifications and conditions.

3.1 PLAN MODIFICATIONS

The Building Commissioner shall not issue a building permit, nor shall any construction activity begin on the Site, until and unless the Zoning Enforcement Officer (ZEO) confirms that the Plan is revised to include the following additional, corrected, or modified information. Except where otherwise provided, all such information shall be subject to the approval of the ZEO. Where approvals are required from persons or agencies other than the ZEO, the Applicant shall be responsible for providing evidence of such approvals to the ZEO.

- 3.1.1 Submit a supplement to the lighting plan showing one or more alternative light pole and light fixture designs for the Main Street side of the Site and the building façades facing Main Street and Beverly Road.
- 3.1.2 Show a construction detail with one or more alternatives for the aesthetic treatment of the retaining wall face and cap in the rear of the Site.
- 3.1.3 Submit all required plan revisions (par. 2.1 through 2.7) of the Original Decision. They shall be subject to ZEO approval prior to the issuance of a building permit.
- 3.1.4 Submit the plan and conveyance instrument for the sidewalk easement required in condition 3.1 of the Original Decision in a form suitable for recording purposes. Both documents shall be subject to ZEO approval prior to the issuance of a building permit.
- 3.1.5 The Plan shall be modified as needed to comply in all respects with the Bylaw.

3.2 CONDITIONS

The following conditions shall be binding on the Applicant and its successors and assigns. Failure to adhere to these conditions shall render this entire special permit null and void, without force and effect, and shall constitute grounds for its revocation, and of any building or occupancy permit issued hereunder. The Town of Acton may elect to enforce compliance with this special permit using any and all powers available to it under the law.

- 3.2.1 The Applicant shall be diligent in complying with the erosion and sediment control plan. The Applicant shall not cause or permit the runoff of water or erosion that result in the flooding or siltation of any street, way or drainage facility owned or maintained by the Town. If such runoff or erosion occurs, the Building Commissioner or the ZEO may order the immediate cessation of any excavation, construction and building activities until the conditions that caused the runoff or erosion have been corrected.
- 3.2.2 All requirements of the Health Director must be met.

- 3.2.3 The applicant shall ensure that noise and dust emissions from the construction site are kept to a minimum.
- 3.2.4 The applicant shall ensure that absolutely no construction debris from the site enters Main Street or Beverly Road.
- 3.2.5 No work on the Site shall begin prior to the issuance of a building permit.
- 3.2.6 All work on the Site shall be conducted in accordance with the terms of the Site Plan Special Permit as issued in the Original Decision and amended herewith and shall conform with and be limited to the improvements shown on the Plan as modified herein.
- 3.2.7 All water service lines shall be installed in accordance with the specifications of the Acton Water Supply District.
- 3.2.8 The Original Decision and this First Amendment shall be recorded at the Middlesex South District Registry of Deeds or the Land Court prior to the issuance of a building permit on the Site.

4 EFFECT OF THIS DECISION

This Decision is in response to the Applicant's Site Plan Special Permit amendment request. In the Original Decision the Board also granted a use special permit for a restaurant with a maximum of 30 seats. This Decision only addresses items and issues associated with the requested Site Plan Special Permit amendment. The use special permit remains unchanged with a seat limit of 30. The Original Decision shall remain in full force and effect, except as specifically amended or added to herein.

The Town of Acton Board of Selectmen


Lauren S. Rosenzweig, Chair

Copies furnished:

Applicant -	Building Commissioner	Health Director
certified mail #	Town Engineering	Municipal Properties Director
Town Clerk	Conservation Administrator	Town Manager
Fire Chief	Police Chief	Acton Water District
Owner	Assistant Assessor	

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